



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 5, 1995

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR95-1044

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32629.

The Texas Department of Criminal Justice (the "department") has received a request for a particular incident report and any reports regarding the incident filed by those persons present when the incident occurred. You have submitted the requested information for our review and claim that sections 552.101 and 552.107 of the Government Code except the information from required public disclosure.

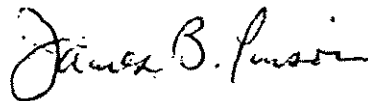
Section 552.107(2) excepts information from required public disclosure when a court order prohibits its release. You claim that section 552.107(2) applies to this request for information because incident reports are specifically made sensitive by the Stipulated Modification of Section IID and Section IIA of the amended decree (the "Stipulated Modification") in *Ruiz v. Estelle*, No. H-78-97, slip op. (S.D. Tex. June 1, 1982), *reprinted in* 679 F.2d 1115, 1174-84 (5th Cir. 1982), *aff'g in part and vacating in part* 503 F. Supp. 1265 (S.D. Tex. 1980), *amended in part*, 688 F.2d 266 (5th Cir. 1982) (per curiam on motion for rehearing), *cert. denied*, 460 U.S. 1042 (1983). In Open Records Decision No. 560 (1990), this office concluded that the predecessor to section 552.107(2) prohibited disclosure of "sensitive materials" as defined in the Stipulated Modification. "Sensitive materials" include, among other things, "an inmate's unit and department files, and all documents typically filed therein, travel cards, disciplinary reports, *incident reports*, use of force reports and grievances." Stipulated Modification, *Ruiz*, slip op. at 2, *reprinted in* 679 F.2d at 1174 (emphasis added). The Stipulated Modification further

provides that "[n]o inmate has access to sensitive information, and all sensitive materials are kept inaccessible." *Id.*, slip op. at 9, *reprinted in* 679 F.2d at 1178.

In Open Records Decision No. 560 (1990), we concluded that because the *Ruiz* lawsuit was not yet final, the forum court was the proper authority to determine that court's intent in the Stipulated Modification. However, the final judgment in *Ruiz* was signed on December 11, 1992. We are currently reviewing the effect of the final judgment in *Ruiz* on the public availability of department records under the Open Records Act in RQ-779. Therefore, you may withhold the incident reports pending the outcome of that decision.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



James B. Pinson
Assistant Attorney General
Open Records Division

JBP/KHG/rho

Ref.: ID# 32629

Enclosures: Submitted documents

cc: Mr. David Kirk Hoffman
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(w/o enclosures)